

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of WorldCom, Inc.	)	CC Docket No. 94-129
	)	
Petition for Declaratory Ruling that West	)	
Virginia's Definition of Customer of Record)	)	
Is Inconsistent with the FCC's Rules	)	

**REPLY COMMENTS OF MCI, INC.**

MCI, Inc. ("MCI") respectfully submits these reply comments regarding the above-captioned petition for declaratory ruling pursuant to the Commission's Public Notice issued April 7, 2004 (DA 04-962).

**The Record Fully Supports Preemption**

MCI filed a petition for the Commission to preempt West Virginia's rule 15 CSR 6, 2.8(b) because it conflicts with this Commission's policies and rules concerning verification of primary interexchange carrier (PIC) changes. Specifically, the West Virginia rule, by limiting authority to make PIC changes to the customer of record, conflicts with the Commission's expressed goal to have the customer of record as the source of authority over who is authorized to make telecommunications decisions.<sup>1</sup> The rule has resulted in hundreds of consumers per month being denied the ability to switch

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<sup>1</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Report and Order and Second Order on Reconsideration, CC Docket No. 94-129, 15 FCC Rcd. 15,996, ¶ 49 (2000) (Third Report and Order).

to MCI service.<sup>2</sup> The record demonstrates that the West Virginia rule is having a negative and disruptive impact on consumers and other carriers.

No party submitted comments opposing the preemption of West Virginia's subscriber verification rules. In fact, the only comments submitted that addressed the merits of MCI's petition for declaratory ruling favored preemption. For example, AT&T and BellSouth agree with MCI that West Virginia's verification rules, which allow only the "customer of record" to make carrier changes, are in direct conflict with FCC rules, which let anyone authorized by the subscriber to make changes.<sup>3</sup> As AT&T noted, "[s]tates do not have unfettered discretion to adopt presubscription rules, or interpretations of those rules, that diverge from the Commission's rulings in this area."<sup>4</sup> "Clearly, [the West Virginia rule] conflicts with the Commission's verification rules that allow the customer of record to authorize other adult persons to change telecommunication services on the customer of record's behalf," writes BellSouth.<sup>5</sup>

Additionally, the contested rule is harmful to consumers and anticompetitive. "Sprint agrees that the West Virginia rule adversely affects interstate competition to the detriment of consumers in West Virginia and to the overarching goals of the Act."<sup>6</sup> "AT&T's experience confirms the Petition's showing that the PSC's process impedes

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<sup>2</sup> See MCI Petition for Declaratory Ruling,

<sup>3</sup> Specifically, West Virginia's rule 15 CSR 6, 2.8(b) conflicts with this Commission's policies and rules concerning verification of primary interexchange carrier (PIC) changes. Rule 15 CSR 6, 2.8(b) provides that only the "customer of record" can verify carrier changes, versus the "subscriber" as more broadly defined by the FCC in 47 CFR 64.1120(a)(1), (c).

<sup>4</sup> Comments of AT&T at 4.

<sup>5</sup> Comments of BellSouth at 2.

<sup>6</sup> Comments of Sprint at 2.

customers' ability to avail themselves on ['all-distance' services]."<sup>7</sup> As BellSouth points out, under the West Virginia rule, the spouse of a soldier stationed abroad could not make a subscriber change if the soldier is the subscriber of record, and would have to forgo any savings a carrier change might bring until the soldier returns home and can verify the change.<sup>8</sup> AT&T points out that widows and the adult children of infirm parents also face similar inconvenience and costs.<sup>9</sup> Moreover, carriers also face inconvenience and substantial unwarranted costs because they must adopt special state-specific marketing procedures as a result of the inconsistency in verification procedures created by the West Virginia rule.<sup>10</sup>

Finally, it is unclear what purpose the West Virginia rule serves. While the Commission's rules allow states to adopt additional verification procedures, such procedures should further the federal goals. However, as AT&T points out, the West Virginia rule does the opposite, by "significantly limit[ing] the range of carrier selection procedures otherwise available to customers and carriers."<sup>11</sup> In addition, BellSouth notes that, if the rule is motivated by a fear that under the Commission's rules a person making a carrier change could falsely claim that she is so authorized, the West Virginia rule is no more effective because the same person will be just as likely to falsely claim that they are the customer of record when verifying a carrier change.<sup>12</sup>

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<sup>7</sup> Comments of AT&T at 6.

<sup>8</sup> Comments of BellSouth at 2.

<sup>9</sup> Comments of AT&T at n.16.

<sup>10</sup> Id. at 6-7.

<sup>11</sup> Id. at 7.

<sup>12</sup> Comments of BellSouth at 2-3.

### Abeyance is Detrimental

In its reply, the Public Service Commission of West Virginia forgoes its opportunity to comment on the merits of MCI's petition.<sup>13</sup> Instead it seeks to have the Commission hold this matter in abeyance until it resolves a petition for declaratory ruling now before it.<sup>14</sup> Filed by AT&T, that petition involves largely the same issues as MCI's present petition before the Commission, and a decision in favor of AT&T might make MCI's petition moot. "Sprint recommends that the Commission afford the PSC a short period of time, *e.g.*, one or two months, in which to rule on the AT&T petition."<sup>15</sup> AT&T would have the Commission "await the outcome" of the West Virginia PSC proceeding.<sup>16</sup>

While MCI would be happy to see this issue resolved at the state level, given the continuing adverse impact the rule is having on consumer choice, the Commission should not delay its resolution of this matter.<sup>17</sup> The Commission should continue with its deliberative process and deal with the implications of a decision in the AT&T petition by the West Virginia PSC when and if that happens. As AT&T notes, although a PSC decision might make the instant proceeding moot, the Commission should compile the necessary record for decision in case it needs to act.<sup>18</sup>

While the Commission has previously declined to preempt state verification rules, it has done so because it has not been presented with a concrete controversy. However,

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<sup>13</sup> Response of West Virginia Public Service Commission at 2-3.

<sup>14</sup> Response of West Virginia Public Service Commission at 2-3.

<sup>15</sup> Comments of Sprint at 2.

<sup>16</sup> Comments of AT&T at 8-9.

<sup>17</sup> MCI also understands that it is not FCC practice to hold proceedings in abeyance, particularly where there is no definitive timeframe.

<sup>18</sup> Comments of AT&T at 9.

as AT&T and BellSouth point out, this is a concrete case and it is ripe for Commission action.<sup>19</sup> MCI therefore respectfully requests that for the foregoing reasons, the Commission preempt West Virginia's Rule 15 CSR 6. 2.8(b) because it is inconsistent with the Commission's important policy objectives.

Respectfully submitted,

MCI, Inc.

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Dated: June 29, 2004

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<sup>19</sup> Comments of AT&T at 8; Comments of BellSouth at 3.

## CERTIFICATE OF SERVICE

I, Michelle Lopez, hereby certify that a copy of the foregoing Reply Comments of MCI, Inc. in CC Docket No. 94-129, has been sent by facsimile, electronic mail and/or U.S. First Class Mail, postage prepaid, this 29<sup>th</sup> Day of June 2004 to the parties listed below.

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